

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

No. 49716-6-II BY SW

DEPUTY

**THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

POTELCO, INC. and JEFF LAMPMAN,

Plaintiffs/Appellants,

v.

DEPARTMENT OF LABOR AND INDUSTRIES,

Defendant/Respondent.

APPELLANTS' REPLY BRIEF

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I. INTRODUCTION

The Electrical Board's decision that Potelco failed to timely request an inspection is not supported by substantial evidence. Instead, the overwhelming evidence shows that Inspector John Boespflug inspected Potelco's worksite at a school in the White River School District as the Potelco crew was finishing up replacing a transmission line. Because Inspector Boespflug completed an inspection of Potelco's work-site on July 17, 2013, and Jeff Lampman fulfilled his duties as an electrical administrator, Potelco and Mr. Lampman respectfully request that this Court vacate Citations No. EBOES00792 and EBOES00793.

II. ARGUMENT

A. The Electrical Board's Finding That Potelco Failed To Timely Request An Inspection Is Not Supported By Substantial Evidence

The Board's decision that Potelco failed to timely request an inspection is not supported by substantial evidence. Although the Department argues that Potelco has shifted the burden of proof, this argument is not supported by the existing record. Instead, Potelco argues that because the overwhelming evidence shows that Inspector Boespflug inspected Potelco's work when he visited the worksite on July 17, 2013, the evidence does not, and cannot, support the conclusion that Potelco failed to timely request an investigation.

After inspecting the worksite and interviewing the crew members, Inspector Boespflug concluded that Potelco's work was "competent" and "safe" and advised the crew that they could energize the line. CP at 598.

In its Brief, the Department argues only that Potelco did not “request” an inspection and ignores the fact that the record shows that Boespflug’s inspection satisfied the requirements of WAC 296-46B-901. Even after Inspector Boespflug contacted Potelco several months later claiming that Potelco had never requested a final inspection, and after Potelco then requested another inspection, Inspector Boespflug never returned to the worksite and instead relied on the information gathered from his initial inspection when he was on-site. CP at 663-4.

The Department’s argument, and the Board’s ultimate decision, overlooks the legislative intent behind the regulation: to ensure that an inspection occurs upon completion of an electrical project. The regulation provides no guidance on the specific method or procedure for requesting an inspection. The rules do not require the request to be in writing or any other particular form. A reasonable interpretation of the statute simply requires that the worksite be inspected upon completion of the work. Inspector Boespflug inspected Potelco’s work as the crew was completing it; therefore, Potelco did not violate the WAC.

Ultimately, because the Board’s decision is not supported by substantial evidence, Potelco respectfully requests that the Court vacate Citation No. EBOES00792.

B. The Electrical Board’s Finding That Mr. Lampman Did Not Fulfill His Duties Is Not Supported By Substantial Evidence

1. Mr. Lampman Ensured That Potelco Complied With Relevant Electrical Laws

The Department’s argument that Mr. Lampman’s efforts to ensure

that Potelco complied with the electrical statutes were “minimal” is unfounded and mischaracterizes the evidence in the record. Mr. Lampman did indeed take reasonable steps to ensure that his employer complied with the electrical rules. As he explained at the hearing, Mr. Lampman complied with RCW 19.28.061(5)(b)’s mandate in many ways, including by:

- Serving as a licensed, qualified electrical administrator for over a decade;
- Instructing, counseling, and ensuring that Potelco employees follow electrical laws that related to the company’s work, including the requirement to obtain permits in certain circumstances;
- Providing training, in conjunction with the Department, to Potelco employees on electrical safety and compliance issues;
- Reminding Potelco employees, through periodic emails and online updates, of compliance requirements and changes to those requirements; and
- Reviewing and analyzing contracts to determine what, if any, permitting or additional compliance work or documentation is necessary in order to perform the work lawfully and safely.

See CP at 336 – 7, 644 – 5, 654. Mr. Lampman also testified that he ensured Glenn Thomas, who was responsible for requesting the permit and the inspection, understood the proper permitting procedures before the start of the job. *Id.* at 648, 654.

In its Brief, the Department offers its own definition of “ensure” to argue that Mr. Lampman’s efforts were insufficient, but its definition is nothing more than a self-serving interpretation of the statute, without basis in law. To the contrary, through his testimony and the rest of the record

before the Court, Lampman has offered evidence sufficient to persuade a fair-minded person that he *ensured* that the company followed relevant electrical statutes, and thus complied with the letter and spirit of RCW 19.28.061(5)(b).

2. RCW 19.28.061 Is Not A Strict Liability Statute

Although the Department has repeatedly argued throughout the course of this appeal that it does not believe that RCW 19.28.061(5)(b) is a strict liability statute, it now appears to argue that it *is* a strict liability statute. However, this line of argument is not supported by the text of the statute or its legislative history.

The language of RCW 19.28.061(5)(b) shows no indication of strict liability. Instead, its language sets forth a broad requirement that an employer's electrical administrator must ensure that all electrical work complies with the installation regulations and state laws. A plain language reading of this requirement indicates that there are various steps an electrical administrator can take to ensure compliance; it does not indicate that, despite taking steps to ensure compliance, an electrical administrator is liable for all mistakes made on the work site.

Furthermore, nothing in the legislative history indicates that the Legislature intended to hold the electrical administrator strictly liable for all company violations. *See* WA F. B. Rep., 2006 Reg. Sess. S.B. 6225.


III. CONCLUSION

For the reasons discussed above and in Appellants' Opening Brief, Potelco, Inc. and Jeff Lampman respectfully request the Court vacate

Citation Nos. EBOES00792 and EBOES00793.

DATED this 24th day of May, 2017.

FOX ROTHSCHILD LLP

By 
Gena M. Bomotti, WSBA #39330
Kristina Markosova, WSBA #47924
Attorneys for Appellants Potelco, Inc. and
Jeff Lampman

2017 MAY 24 PM 2:10

CERTIFICATE OF SERVICE

STATE OF WASHINGTON

I, Ashley Rogers, certify that:

BY _____
DEPUTY

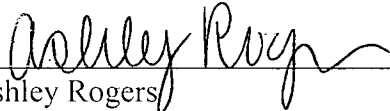
1. I am an employee of Fox Rothschild LLP, attorneys for Appellants Potelco, Inc. and Jeff Lampman in this matter. I am over 18 years of age, not a party hereto, and competent to testify if called upon.

2. On May 24, 2017, I served a true and correct copy of the foregoing document on the following party, attorney for Respondent, via email and mail, and addressed as follows:

Steve Vinyard, WSBA #29737
Assistant Attorney General
Washington Attorney General's Office
7141 Cleanwater Dr. SW
PO Box 40121
Tumwater WA 98501

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED at Seattle, Washington, this 24th day of May, 2017.



Ashley Rogers